IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9569 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ZAKIRHUSSAIN HABIBBHAI VIRANI

Versus

STATE OF GUJARAT

Appearance:

MR NAVIN K PAHWA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2 & 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Bhavnagar, passed an order on November 5, 1999, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980 ("PBM Act" for short), detaining petitioner-Zakirhussain Habibbhai Virani under the provisions of the said Act. The petitioner was, however, detained on 19.11.1999.

2. The grounds of detention indicate that samples of diesel and petrol were collected from the petrol pump run by the petitioner and, on testing, it was found that the petrol octane results were not according to the prescribed standards. It was, therefore, concluded by the detaining authority the the petitioner was engaged in adulterating petrol. After considering possibility of resorting to less drastic remedies, the authority came to conclusion that detention under PBM is the only remedy that can be resorted to for immediately preventing the petitioner from continuing his activities detrimental to smooth supply of essential commodities.

3. The detenu has challenged the order of detention by this petition under Article 226 of the Constitution on various counts. However, Mr. Thakkar, learned advocate appearing for the petitioner, has restricted his arguments to the aspect of delay in consideration of the representation by the Central Government. In support of his argument, he has placed reliance on affidavit in reply filed on behalf of the Central Government itself. He submitted that the Central Government, on receiving the representation, called for parawise comments from the State Government. The comments were received by the Central Government, admittedly, on 17.12.1999. However, the representation was rejected by competent authority of the Central Government on December 25, 1999. Mr. Thakkar submitted that an attempt is made to explain this delay by stating that 18th and 19th December, 1999 were closed Saturday and Sunday. Still no explanation is given for the period between 19th December and 25th December, 1999 and, therefore, this unexplained delay has affected the detenu's right of making an effective representation. The continued detention is, therefore, rendered illegal. The petition may, therefore, be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader has opposed this petition on behalf of the detaining authority and the State Government. Ms. Davawala has opposed this petition on behalf of the Union of India.

5. Considering rival side contentions, the only question that needs to be addressed by this Court is whether there was delay in consideration of

representation on behalf of the detenu made to the Central Government.

5.1 There is no dispute about a representation having been made on behalf of the detenu to the Central Government. The representation was dated December 1, 1999. The same was received on December 3, 1999 and the Central Government called for parawise remarks by telegram on December 2, 1999 (there seems to be typographical error in the affidavit in reply). As no remarks were received by the Central Government till 13th December, 1999, a telegram in reminder was sent and, pursuant thereof, the State Government forwarded the parawise comments on December 14, 1999, which was received by the Central Government Government on 17.12.1999. The representation came to be rejected by the Central Government on 25th December, 1999, i.e. after eight days. The affidavit in reply filed on behalf of the Central Government states that the representation was received on 17.12.1999. 18/12 and 19/12 were holidays, being Saturday and Sunday and, thereafter, the representation was considered in light of parawise remarks. Even if this explanation is accepted, there is no explanation coming forward from the Central Government for dates between 19th December and 25th December, 1999, i.e. for about five days. When the Central Government had parawise comments on the representation, it was expected of the Central Government to have acted expeditiously or to have explained as to how these five days were consumed in considering the representation and, in absence of any explanation from the Central Government in this regard, it can certainly be said that there is a delay in considering the representation made by the detenu, which has adversely affected the right of the detenu of making an effective representation. In this regard, decision in the case of Rajammal v. State of Tamil Nadu, AIR 1999 SC 684 can be referred to. In that case, there was a delay of five days in considering and disposing of the detenu's representation. It was stated that there is absence of the Minister concerned at the head quarter and the Apex Court said that it is not a sufficient ground to justify the delay. In the instant case, there is no explanation for this five clear days falling between 19th December and 25th December, 1999 and, therefore, the detention would stand vitiated. The petition, therefore, requires to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated 5th November, 1999 is hereby quashed. The detenu-Zakirhussain Habibbhai Virani is ordered to be set

at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]
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